

**COAL MINING AND RECLAMATION****AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill amends provisions relating to fees assessed for a coal mining and reclamation application or permit.

**Highlighted Provisions:**

This bill:

- ▶ authorizes the board and division to adopt and assess:
  - a fee for an application; and
  - an annual fee for a permittee;
- ▶ limits the amount of an application fee to the division's costs; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**40-10-6**, as last amended by Laws of Utah 2008, Chapter 382

**40-10-10**, as last amended by Laws of Utah 2006, Chapter 27

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **40-10-6** is amended to read:

**40-10-6. Powers, functions, and duties of board and division.**

(1) In addition to ~~[those provided]~~ the authority granted in Title 40, Chapter 8, Utah Mined Land Reclamation Act, the board and division ~~[have the following powers, functions, and duties]~~ may:

32           ~~[(1) to]~~ (a) make ~~[and promulgate]~~ rules, in accordance with Title 63G, Chapter 3,  
33   Utah Administrative Rulemaking Act, ~~[the rules as]~~ that are specifically necessary for the  
34   regulation of coal mining operations and reclamation operations;

35           ~~[(2) to]~~ (b) authorize its employees, agents, or contractors to enter upon any property  
36   for the purpose of carrying out the provisions of this chapter and Title 40, Chapter 8, Utah  
37   Mined Land Reclamation Act;

38           ~~[(3) to]~~ (c) (i) establish specific reclamation and performance standards for new and  
39   existing coal mining operations; and ~~[to]~~

40           (ii) effectuate ~~[these]~~ the standards authorized by Subsection (1)(c)(i) retroactively;

41           ~~[(4) to]~~ (d) (i) prohibit mining and exploration operations without a permit; and ~~[to]~~

42           (ii) establish procedures and requirements for the preparation, submission, approval,  
43   denial, termination, and modification of applications for;

44           (A) coal mining and reclamation permits; and ~~[for]~~

45           (B) coal exploration permits;

46           ~~[(5)]~~ (e) ~~[to set]~~ by following the procedures and requirements of Title 63J, Chapter 1,  
47   Budgetary Procedures Act and Subsection 40-10-10(1)(b), adopt and assess ~~[an application];~~

48           (i) a fee ~~[based on no more than the actual cost of review and processing of the~~  
49   ~~application, this fee to accompany each application for a surface coal mining and reclamation~~  
50   ~~permit and each application for an exploration permit;]~~ for an application authorized by this  
51   chapter; and

52           (ii) an annual fee for a permittee;

53           ~~[(6) to]~~ (f) establish procedures and detailed requirements for all reclamation plans  
54   submitted as part of a permit application;

55           ~~[(7) to]~~ (g) (i) condition the issuance of a permit to commence or continue surface  
56   mining operations upon the posting of performance bonds, deposits, or sureties; and ~~[to]~~

57           (ii) make provision for the release of ~~[same]~~ a bond, deposit, or surety in compliance  
58   with the requirements of this chapter;

59           ~~[(8) to]~~ (h) appoint or employ technical support, legal services, or independent  
60   consultants in furtherance of the objectives of this chapter ~~[and shall be responsible for~~  
61   ~~coordination with other agencies in matters relating to mined land reclamation and the~~  
62   ~~application of related law]; and~~

63           ~~[(9) to]~~ (i) do all other things and take ~~[such]~~ other actions retroactively or otherwise  
64 within the purposes of this chapter as may be necessary to enforce its provisions.

65           (2) The board and division shall coordinate with other agencies in matters relating to  
66 mined land reclamation and the application of related law.

67           Section 2. Section **40-10-10** is amended to read:

68           **40-10-10. Permit application fee -- Submission of application and reclamation**  
69 **plan -- Determinations, tests, and samplings -- Filing of application -- Insurance required**  
70 **-- Blasting plan.**

71           (1) (a) Each application for a surface coal mining and reclamation permit under the  
72 provisions of this chapter shall be accompanied by a fee ~~[as determined by the division]~~ as  
73 authorized by Section 40-10-6.

74           (b) The fee specified in ~~[this]~~ Subsection (1)(a) may not exceed the division's actual or  
75 anticipated cost ~~[by the division to process and review the application.]~~ of reviewing,  
76 administering, and enforcing the permit.

77           (2) (a) The permit application and the reclamation plan submitted as part of a permit  
78 application shall be submitted in the manner, form, and with the content specified by the  
79 division in its rules, and shall include the names and addresses of:

- 80           (i) the permit applicant;
- 81           (ii) every legal owner of record of the surface and mineral estate to be mined;
- 82           (iii) the holders, of record, of any leasehold interest in the property;
- 83           (iv) any purchaser, of record, of the property under a real estate contract;
- 84           (v) the operator, if ~~[he]~~ the operator is a person different from the applicant; and
- 85           (vi) the names and addresses of the principals, officers, and resident agent for service  
86 of process, if any of these are business entities other than a single proprietor.

87           (b) (i) A permit application shall include:

- 88           (A) an accurate map or plan, to an appropriate scale, clearly showing:
- 89           (I) the land to be affected as of the date of the application[;]; and
- 90           (II) the area of land within the permit area upon which the applicant has the legal right  
91 to enter and commence surface mining operations; and

92           (B) a statement of:

- 93           (I) those documents upon which the applicant bases [his] the applicant's legal right to

enter and commence surface mining operations on the area affected[;]; and

(II) whether ~~that~~ the right to enter and commence surface mining operations is the subject of pending court litigation.

(ii) This chapter may not be construed as vesting in the division the jurisdiction to adjudicate property title disputes.

(c) (i) A permit application shall also include a:

(A) determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site with respect to the hydrologic regime;

(B) determination of the quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions; and

(C) collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the division of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and, particularly, upon water availability.

(ii) The ~~[determination required under]~~ division may not require the determination described in Subsection (2)(c)(i) [shall not be required] until the hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency.

(iii) The division may not approve the permit ~~[shall not be approved]~~ until the information required under this section is available and is incorporated into the application.

(d) (i) ~~[A]~~ Except as provided by Subsection (2)(d)(ii), a permit application [with] shall also include the following information:

(A) the result of test borings or core samplings from the permit area, including logs of the drill holes;

(B) the thickness of the coal seam found;

(C) an analysis of the chemical properties of the coal;

(D) the sulfur content of any coal seam;

(E) chemical analysis of potentially acid or toxic-forming sections of the overburden;

and

(F) chemical analysis of the stratum lying immediately underneath the coal to be mined.

(ii) ~~[Application]~~ The division may waive the application requirements of Subsection (2)(d)(i) ~~[may be waived by the division]~~ if there is a written determination that ~~[these]~~ the

requirements are unnecessary.

(3) (a) If the division finds that the probable total annual production at all locations of a coal surface mining operator will not exceed 300,000 tons, and if funding is available under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., the division shall pay the cost of the following activities [~~shall be paid by the division~~], upon the written request of the operator in connection with a permit application:

(i) the determination of probable hydrologic consequences required by Subsection (2)(c), including the engineering analyses and designs necessary for the determination;

(ii) the development of cross-section maps and plans of the land to be affected, including the area to be mined;

(iii) the geologic drilling and statement of results of test borings and core samplings required by Subsection (2)(d);

(iv) the collection of archaeological and historical information required by the division, and the preparation of those plans;

(v) preblast surveys required by Subsection 40-10-17(2)(o); and

(vi) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the division under this ~~[act]~~ chapter.

(b) The activities specified in Subsection (3)(a) shall be performed by a qualified public or private laboratory or other qualified public or private entity designated by the division.

(c) A coal operator who has received assistance pursuant to this Subsection (3) shall reimburse the division for the cost of the services rendered, if the division finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(4) (a) Information pertaining to coal seams, test borings, core samplings, or soil samples or other equivalent information, as required by this section, shall be made available to a person whose interest is, or may be, adversely affected.

(b) Information [~~which~~] that pertains only to the analysis of the chemical and physical properties of the coal, except information regarding any mineral or elemental content which is

156 potentially toxic to the environment, shall be kept confidential and not made a matter of public  
157 record.

158 (5) An applicant for a surface coal mining and reclamation permit shall file a copy of  
159 the application for public inspection with the county clerk of the county, or an appropriate  
160 public office approved by the division where the mining is proposed to occur, except for  
161 information pertaining to the coal seam itself.

162 (6) (a) An applicant for a permit shall ~~[be required to]~~ submit to the division as part of  
163 the permit application;

164 (i) a certificate issued by an insurance company, authorized to do business in the state,  
165 certifying that the applicant has a public liability insurance policy in force for the surface  
166 mining and reclamation operation for which the permit is sought~~[-]~~; or

167 (ii) evidence that the applicant has satisfied other state or federal self-insurance  
168 requirements.

169 (b) The policy shall:

170 (i) provide for personal injury and property damage protection in an amount adequate  
171 to compensate any persons;

172 (A) damaged as a result of surface coal mining and reclamation operations, including  
173 the use of explosives~~[-]~~; and

174 (B) entitled to compensation under the applicable provisions of state law; and

175 (ii) be maintained in full force and effect during the terms of the permit or any renewal,  
176 including the length of all reclamation operations.

177 (7) An applicant for a surface coal mining and reclamation permit shall submit to the  
178 division, as part of the permit application, a blasting plan which shall outline the procedures  
179 and standards by which the operator will meet the provisions of Subsection 40-10-17(2)(o).